IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3548 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT SD/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO

HEIRS OF KHARAK K THAKARSI & ORS.

Versus

COLLECTOR BHAVNAGAR & OTHERS

Appearance:

MR JM PATEL for Petitioners

MS PS PARMAR ADDL. GOVT. PLEADER

for Respondent No. 1 and

MR JRNANAVATI for respondents nos. 2/1 to 2/6.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 08/11/96

ORAL JUDGEMENT

On 25th January 1982, in Case No.2 of 1981, the Mamlatdar at Talaja, certified the Entry No. 1407 posted in Pahani Patrak relating to Survey Nos. 170, 72 Paiki, and 71 Paiki situate within the sim of town Talaja, whereby name of Puna Kala was entered in the column

"Farmer's Name". In appeal, on 30th September 1982, the Deputy Collector, Mahuva maintained the order of the Mamlatdar.The Collector at Bhavnagar rejected the revision application on 4th July 1983, confirming the orders of the Deputy Collector and Mamlatdar. The Secretary (Revenue) at last dismissed the revision on 29/4/1985. Thus the entry posted in the name of Puna Kala deleting the name of Khata Kalyan and others, came to be maintained. The petitioners have called in question the legality and propriety of these orders preferring this petition under Art.227 of the Constitution of India.

2. In short the case of the petitioners is that Kharak Kalyan Thakarsi and Kharak Puna Kala were the owners of the agricultural lands bearing Survey Nos. 170, 70 Paiki and 71 Paiki,situated within the sim of town Talaja in Bhavnagar District. The petitioners are the heirs and legal representatives of deceased Kharak Kalyan Thakarasi, while the respondent Nos. 2/1 to 2/6 are the heirs of deceased Kharak Puna Kala. About more than 50 years ago from 1978-79, the properties jointly owned by the deceased Kharak Kala Thakarasi and deceased Kharak Puna Kala came to be divided by metes and bounds. Certain portions of all the aforesaid lands fell to the share of Kharak Kalyan Thakarsi and rest of the portion of the lands fell to the share of Kharak Puna Kala. Thereafter qua their shares, their names were mutated in revenue record. Thus the parties are using and cultivating the portions of these three agricultural lands fell to their respective shares right from the date of the partition. Prior to the partition, Kharak Kalyan Thakarsi and Kharak Puna Kala were using and cultivating the lands. In the land which fell to the share of the petitioners, the respondent nos. 2/1 to 2/6 have no right, title or interest. However they applied to the Mamlatdar to post the entry in the revenue record so as to show their possession of the lands, submitting that after the partition for quite a long time, the names of Khata Kalyan and others continued in "Farmer"s column, though from the date of partition, they are in actual possession of the land. To put in other words, according to respondents nos. 2/1 to 2/6, the entry in revenue record was not echoing their actual possession of the land. The entry corresponding to their actual position, deleting the name of Khata Kalyan and others was required to be posted. Having come to know about the application for mutation of the entry filed, the petitioners appeared before the Mamlatdar and filed their objections, because they found that indirectly their possession and ownership of the land were challenged. They submitted before the

Mamlatdar that about 50 years had passed after the partition, and there was no base or just cause to delete their names and post the entry as prayed for. To grab their land shrewdly the mischief was being played. In fact, they were in actual possession of the land right from the day the properties were partitioned. There was inordinate delay in praying for necessary change in the entry posted. What was done and set-well after the partition, would be upset for no good cause and after a period of 50 years respondents' malice would have upper hand. As the period of about 50 years had passed, it was not possible for the petitioners to file the suit in the civil court, ingeniously a plan was engineered for getting their names entered in revenue record and then gradually claim ownership. In the alternative, it was submitted before the Mamlatdar that even if it is believed that the respondents might be right, they being in possession for more than 50 years continuously, openly, uninterruptedly and in the notice of all, they had become the owners of that land by adverse possession, and so the respondents might be asked to file the suit before the civil court. The Mamlatdar, hearing both the parties, appreciating the evidence before him as well as making local inspection reached the conclusion favouring the respondents and ordered to post entry as prayed for. The petitioners who could not find favour, carried the matter upto the State level in appeal and in revision but they failed. Hence the present petition is filed challenging the orders passed by the Mamlatdar and other authorities in appeal and in revision.

3. In the present petition, the order passed by the Mamlatdar on 25th January 1982 and confirmed upto the revisional stage is called in question, on the same grounds on which before Mamlatdar and different higher Forums upto the State level, the petitioners resisted the respondents claim. It may be noted that the supervisory jurisdiction of the High Court under Art. 227 of the Constitution of India, is limited. If the decision is found wrong without anything more, the High Court under writ jurisdiction will not review or reweigh the evidence upon which determination of inferior court or Tribunal purports to pass or correct the error of law in the decision. The High Court has to under writ jurisdiction examine whether the Courts' below or Tribunal has functioned within the limits of its authority, and not to correct the error even if found apparent on the face of the record, much less any error of law. The High Court, under Art. 227 of the Constitution, therefore does not act over Appellate Court or Tribunal. In view of this decision, it would not be open to this court to dissect

the merits of the order passed; or examine, the correctness of the order on the grounds on which the claim was resisted by the petitioners before the Mamlatdar or higher forums. For such view, I am fortified by the decision of the Supreme Court rendered in the case of Mohd. Yunus vs. Mohd.Mustaqin AIR 1984 SC 38. However it may be clarified that the High Court can examine into the cases where the provisions of the Act have not been complied with, or the Tribunal has not acted in conformity with the fundamental principles of Judiciale procedure i.e. it has acted in defiance of or non-compliance with the essentials of the procedure. In short any order passed, without jurisdiction or outside ones' own power or tainted by fundamental irregularity, the same can be the subject of scrutiny by the High Court in writ jurisdiction. When the Tribunal, or Court or the authority acts within its' jurisdiction, it is not for the High Court to weigh the evidence or sufficiency of evidence on which it has acted so as to interfere. In case of fraud, the High Court can examine the question over again.

4. The case of fraud is not at all alleged. What transpires from the copies of the judgments of the Mamlatdar and before forums is that opportunity to submit was given, evidence adduced by the parties was recorded and the Mamlatdar had gone to the site for local inspection and have the idea about possessory position. The Mamlatdar acted in conformity with the fundamental principles of judicial procedure. He was vested with power to post entries or change it and certify it. The order passed is certainly within the jurisdiction of the Mamlatdar. The order in question is, therefore, not the subject of scrutiny by this Court in writ jurisdiction.

5. Faced with such situation, Mr. Patel, learned advocate representing the petitioners submitted that in view of Sec. 135-C of the Bombay Land Revenue Code, the Mamlatdar ought not to have entertained the application for mutation of the entry as period of three months was over long ago which began to run right from the date of the partition. No doubt, as per Sec.135-C of the Bombay Land Revenue Code, any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right, as holder, occupant, owner, mortgagee, landlord or tenant of the land or assignee of the rent or revenue thereof, the same has to be reported to the village Accountant within the period of three months from the date of such acquisition so that necessary mutations in the revenue record can be made showing the fact about acquisition and consequential

changes can be effected. However it should be noted that when the partition before about more than 50 years took place between the parties or their predecessors-in-title, the area in which the land is situated was forming part of the then Saurashtra State which came to be merged with the then Bombay Bilingual State in 1949-50 and so Bombay Land Revenue Code then came to be applied to the Saurashtra Region of the present Gujarat State. At the time when partition took place therefore, the Bombay Land Revenue Code was not applicable, and so within 3 months from the day the Code came to be applied necessary report ought to have been made; which is also not done. One would in such facts and circumstances of the case believe that the claim entertained was barred by the limitation and on that count, the Mamlatdar ought not to have entertained the claim but rejected the same, but ground of limitation on which the petitioners harp on much, cannot be acceded to in view of Sec.135-F of the Bombay Land Revenue Code which provides that if the person neglects to make any report which he is required to make under Sec.135-C or furnish information or produce the document as required under Sec.135-B within the prescribed period, shall be liable at the discretion of the Collector to be charged fee not exceeding Rs.25/which shall be leviable as an arrear of land revenue. Under this section, therefore, if within the period prescribed under Sec.135-C, the report is not made or information is not furnished to the village Accountant, it can lateron at any stage be furnished or reported, paying necessary fee not exceeding Rs.25/- that may be fixed by the Collector in his discretion. When accordingly penalty is prescribed for negligence of the party or omission of the party to do particular act under Sec.135-C, the entertainment of the claim by the Mamlatdar would tantamount to condoning delay caused even if penalty is not levied. In view of the fact, the question of limitation is not at all fatal as canvassed by Mr. Patel, the learned advocate representing the petitioners.

5. Now the next question question that arises for consideration is who would prefer the suit before Civil Court to remedy the grievance that crops up owing to mutation. Mr. Patel, learned advocate representing the petitioners submitted that the petitioners were not the wrong doers but the respondents who remained idle for more than 50 years and allowed a particular entry to be continued against their interest, and so it was for them to file the suit. In this connection, it may be mentioned that the party aggrieved by the entry posted or changes made has to prefer the suit and get his grievances remedied before the civil court.The

petitioners, being aggrieved, therefore if at all they desire, may file a suit before the civil court for necessary relief and have the redressal of their grievances.

6. If at all the petitioners believe that by such fact, their title is challenged, it would be open to them to pray for necessary relief in the civil suit but on that count, they cannot succeed in this petition.

7. In view of the aforesaid circumstances, there is no reason to interfere with the order in this writ petition. The petition is, therefore, dismissed with no order as to costs. Rule discharged.
